

Resolution #TC-3180

BE IT HEREBY RESOLVED, that the Transportation Commission's Regular Minutes for July 17, 2014, are approved as published in the official agenda of the August 20 & 21, 2014, meeting.

**Transportation Commission of Colorado
Regular Meeting Minutes
July 17, 2014**

Chairman Ed Peterson convened the meeting at 9:05am in the auditorium of the headquarters building in Denver, Colorado.

PRESENT WERE: Ed Peterson, Chairman, District 2
Kathy Connell, Vice Chairman, District 6
Shannon Gifford, District 1
Gary Reiff, District 3
Kathy Gilliland, District 5
Sidny Zink, District 8
Les Gruen, District 9
Steven Hofmeister, District 11

EXCUSED: Heather Barry, District 4
Doug Aden, Chairman, District 7
Bill Thiebaut, District 10

ALSO PRESENT: Scot Cuthbertson, Deputy Executive Director
Gary Vansuch, Director of Process Improvement
Debra Perkins-Smith, Director of Division of Transportation
Josh Laipply, Chief Engineer
Heidi Humphreys, Director of Admin & Human Resources
Barb Gold, Audit Director
Amy Ford, Public Relations Director
Scott Richrath, CFO
Herman Stockinger, Director of Policy and Government Relations
Mike Cheroutes, Director of HPTE
Mark Imhoff, Director of Division of Transit and Rail
Ryan Rice, Director of the Operations Division
Darrell Lingk, Director of the Office of Transportation Safety
Tony DeVito, Region 1 Transportation Director
Tom Wrona, Region 2 Transportation Director
Dave Eller, Region 3 Transportation Director
Kerrie Neet, Region 5 Transportation Director
Kathy Young, Chief Transportation Counsel
John Cater, FHWA
Vince Rogalski, Statewide Transportation Advisory Committee (STAC)

AND: Other staff members, organization representatives,
the public and the news media

An electronic recording of the meeting was made and filed with supporting documents in the Transportation Commission office.

Audience Participation

Colorado State Senator Matt Jones stated that he represents Louisville, Longmont, Lafayette and part of Erie. He wanted to speak on I-70 East process and the HPTE process. He stated that he appreciated the Commission's service, which he has expressed at other times, including confirmations. He stated these are Coloradans' roads and their money. They deserve to have a real voice in the process and the outcome. The staff decision to recommend one HPTE option was decided prior to the public meeting required in the Executive Order and that would have been required in the bipartisan bill. After all the fallout over the handling of the US36, it appears that little has really changed.

He stated that he wanted to speak briefly about the public participation process and the Value for Money study. He asked what public participation was about and stated that he used to do that professionally as part of an international organization that facilitated this. He stated that there are two purposes. The first is to inform people, and the second is to listen and be open to change, look for good ideas to incorporate.

In the June 19 memo written for the previous Commission meeting, it stated that staff would recommend one option to the Commission (Design – Build – Finance – Operate – Maintain [DBFOM]) before the public meeting had even been held. He stated that he and other legislators were concerned because he had been told that this was not final and no decisions had been made. He stated that once the decision has been referred to the HPTE the chance of it not being done is significantly diminished, and he stated the public needed to know that. He attended the public hearing and did not hear once about the current meeting and the current decision. He stated that he may have missed it, but the people there did not know that the Commission would be making a big decision today, not the final decision but a decision that will be hard to reverse. He stated that the following day the agenda was already posted for the current meeting, and there was a memo with the staff recommendation for the Commission to proceed with the single option. That memo had to have been written before the town hall occurred and before the people were listened to.

He then stated that the Value for Money study looked like it had been written by a contractor for a contractor. It played up all the positives, and the drawbacks were not monetized in the study. For instance, he asked what the cost of a potential bankruptcy would be. He asked what the cost would be to a citizen trying to determine what was going on with I-70 and trying to figure out how HPTE fits into the equation. He asked what the cost of policy changes that would be stopped because the state previously entered a 40- or 50-year contract. This was discussed at the town hall, but it was not specific to the issue that the Commission will decide at the current meeting. He then stated that the biggest flaw is that this entire process says that private contractors can oversee this project better than CDOT. He stated that he had confidence in CDOT, the Department that brought TREX early and under budget and fixed all the flood damage by December 1, 2013, when no one thought it was possible. He stated that he believed CDOT could do this project but that the study says that CDOT cannot.

He stated that he spoke to staff and his Commissioner as soon as he saw the memo. He stated that he believed CDOT was in a place to make some of the same mistakes that were made on US 36 but that the Commission was still able to avoid those mistakes. He asked the Commission to delay the decision rather than making it at the current meeting. He asked the Commission to look at the analysis and make it a balanced analysis. He asked them to hold a town hall to discuss this specific issue. He stated that he has heard no decision has been made but that the truth is the Commission is making a very big decision. He stated that those decisions would delay things and possibly hurt the project. But he stated that if this is the New Era in transportation, as it says in the materials, then more companies will come into competition, which means that there is no rush to make these decisions. He stated that the more important issue right now is to listen to the people who are going to be affected the most, think about what they say, not pre-judge it and not run a process to act like people are being listened to when they are not being listened to. He stated that those were his requests to the Commission today.

He stated that a staff member gave him the new, red-lined resolution. He stated that those changes increased a 5% chance that the decision may be reversed to a 7% or 8% chance that the decision will be reversed. This is a huge decision that the public did not know about and deserved to know about. These are their roads. They need to have a meaningful voice in this process.

Commissioner Reiff stated that he has tremendous respect for Senator Jones. He stated that the language added to the resolution belonged to himself from the HPTE meeting the previous day. He stated that he does not want to pre-judge the public process. He understands the need to start a process because if nothing is started, it is hard to get anywhere. However, he stated that he wants it to be perfectly clear in the resolution that as one Commission he does not believe this is a foregone conclusion. However, it is necessary to start a process but as a Commission he will want to hear the final analysis and hear the input as the process progresses. He wants to be absolutely clear that the Commission can retract the referral and modify the decision. He stated that he believed that needed to be expressed in the resolution. He stated that he heard the Senator's concerns and to some degree shared those concerns. He stated that he has already started the conversation with Director Cheroutes about whether the finance part of the DBFOM is right now. He stated it must be looked at as an economic issue. He stated that as a Commissioner and as a Board member of HPTE, he has not pre-judged this issue. He stated that he appreciates the Senator's time and comments.

Senator Jones stated that he appreciated Commissioner Reiff's comments but that everyone knows how these things work. He stated that he had worked in government for most of his life as a staff member and as a legislator. He stated that when a staff member makes a referral, that staff member should be relatively certain that their recommendation is going to happen. Once that recommendation is "sanctified" by the decision-making body, the difficulty in reversing that is huge, probably around 5%. The fact is that only one alternative is being recommended for study. He stated that it would not be such an issue if it was Design-Build through HPTE or Design-Build through the Department as has been traditionally done and like TREX was done. This is setting a course to dial in on a single option that the people in the public hearing or on the telephone town hall likely did not understand. This is a very big decision

that should have been told to the public, and there should have been an entire open house around this one issue. He stated that people are going to get upset because they came to the town hall and were not informed about this big decision. He stated this is US 36 all over again. He stated that he asked himself why he is still going after this topic because US 36 is done. He is happy to have the road, but he is not happy with the financing and the way that the financing happened. These are the public's roads. This is our responsibility to do this right. To do this right, this decision needs to be delayed and the people need to be told exactly what is going on. Then they need to be listened to. The financing will be 30, 40, 50, 60 years. They need to be given the opportunity to have a real opinion, and CDOT needs to be open to changing theirs. He stated that he appreciated the change in the resolution but it has to be much bigger than that. The prejudgment of the outcome before the public meeting will haunt the Commission. People will be angry, and he only wants to give people a voice. He thanked the Commission for their time and service.

Chairman Peterson stated that since this was a time for public comment, there would not be discussion. He did want to give Commissioner Reiff an opportunity to comment as the author of the changes to the resolution. He thanked Senator Jones for taking the time to address the Commission. He stated that the Commission takes these comments very seriously.

Individual Commissioner Comments

Commissioner Gifford stated that most of the work she has done for the last month has been meeting with individual council members with CDOT staff to discuss the financing plan for I-70E. This is a complex subject, so people needed a time to familiarize themselves with it. She stated that she thought the process was further along than it seems to be currently. CDOT has gotten good feedback from the council members and from the recent public meeting.

Commissioner Connell thanked the staff and the chairman for putting together the retreat for the Commission the two previous days.

Chairman Peterson thanked everyone who participated in the retreat. He stated that there was much accomplished. This will be great year full of challenges and full of opportunities. He is excited about the level of engagement between the staff and the Commission. He appreciates the dedication of the organization and the other Commissioners.

Executive Director's Report

Commissioner Peterson stated that Executive Director Don Hunt was traveling during the meeting but left comments to be included under the Executive Director's report. Commissioner Peterson read those comments:

He thanked Henry Sobanet for attending the meeting to brief the Commission on Senate Bill 228. A TC workshop is expected during the month of August 2014 to begin discussing full project development for Senate Bill 228 over the five year intended term. Regarding a "New Transportation Model," including pay for premium services and express lanes, incorporating private sector innovation, better systems management to reduce congestion, HPTE Director Michael Cheroutes and the CDOT

Executive Director met with four editorial boards from *The Denver Post*, *The Business Journal*, *The Boulder Camera* and *The Aurora Sentinel*. A meeting with Stan Hilkey, the new Executive Director of the Colorado Department of Public Safety, agreed to redouble the cooperative efforts on Colorado State Patrol coordination for the I-70 Mountain Corridor and incident management response for quick clearance. He offered a special thanks to Regions 1, 3 and 4 in which the Executive Director rode in the Fourth of July parades with his grandson in the restored 1939 Coleman snow plow, a beautiful restoration done by CDOT employees. It was towing an Army Howitzer used for avalanche control on Berthoud and Loveland passes.

Chief Engineer's Report

Josh Laipply stated that he enjoyed the retreat as well and thanked the Commission for the opportunity to participate. He stated that he wanted to address the bid rejections that have been previously mentioned. So far in the month of July, ten bids have been opened, and five of those were rejected at the table. It is an ongoing issue, and CDOT is collecting a lot of information around it. There is a meeting with CCA on July 21, 2014. They will discuss the issue and the best way to move forward. He anticipated coming back to the Commission in August 2014 to discuss the results and possible mitigation measures to overcome the current issues. There are many issues at play including the timing of the market and the market conditions. This is one of the big issues impacting the program currently.

High Performance Transportation Enterprise (HPTE) Director's Report

Michael Cheroutes stated that the HPTE Board met in regular open session on July 16, 2014. They discussed multiple pending and potential matters. An update on the US 36 project showed that everything is on schedule. There was a short discussion on Peak Period Shoulder Lanes and the potential for getting that project accelerated with innovative financing, not including the Public-Private Partnerships. He stated that he spent a lot of time in outreach over the last three or four weeks, meeting with editorial boards from areas of the I-70E project. Those meetings were informative in both directions. They spent time in one-on-one sessions with ten members of the Denver City Council discussing the I-70E project and in particular the options that are on the table for financing and delivering that project. Those discussions included two or three hours with Councilwoman Montero, who led a thorough discussion of what was going on and what the schedule was. HPTE participated in two town halls, including a telephone town hall and a session at the rec center in Swansea. The project and the prospects were discussed in great detail.

Yesterday, the HPTE Board adopted its public transparency policy, which flows from the Governor's Executive Order that was issued in connection with his action on Senate Bill 197. The Transparency Policy mirrors the transparency aspects of Senate Bill 197 almost exactly. In addition, the Board considered a number of public comments that came in regarding that policy. A key one included consideration of transit in connection with any kind of financing that the HPTE looks at.

HPTE also took action on a resolution recommending, subject to further input and analysis, that the HPTE be given the authority to pursue as one of the options on the table a Public-Private Partnership for the I-70E corridor. He stated that he will address that more when the item comes up on the agenda.

FHWA Division Administrator Report

John Cater stated that they received the annual summary of CDOT's research projects. He stated that there was an analysis of the full closures of facilities. It was broader than closing only the freeways, and it looked at the cost-benefit analysis of that. It was an eye-opening report about how effective that can be and what an important tool it is to have in the tool box. A complete closure for a limited period of time can have a smaller impact on the public overall than trying to maintain limited traffic through the facility over weeks or months, depending on the scope of the project. One coming up will be the I-25 Gap Project, which will be a total closure of I-25. This is a prudent way to go. There will be a quality product with much less disruption to the public than trying to do it in traffic for weeks on end.

Secondly, CDOT has been working very hard with FHWA to address inactive projects, projects for which the money has been obligated but there has been no expenditure for a year. This is a prominent issue because the Highway Bill is being reauthorized, the Trust Fund needs to be addressed and an appropriations bill that needs to happen. So there is a lot of spot light on the highway program. The last thing that CDOT wants is to be sitting on large amounts of money that are not being used. It is difficult to overemphasize how important it is to address inactive projects. Steve Markovetz and Richard Zamora have done a great job working with FHWA, especially on local projects. These tend, more often than not, to be locally handled projects. This issue will remain a politically important topic.

Finally, he stated that he wanted to make the Commission aware of legislative changes and how those locally impact Colorado. The good news is that it is likely that a bill will be passed to fill the gap in the Trust Fund. It has already passed the House and will likely pass the Senate soon. It will include an extension on MAP-21 through May. One of the consequences of that bill is that it sets the operating funds for FHWA at a lower level than in the past. That was not expected, so there will be a hit to the local federal highway office. There will be a 3% cut in operating costs, which does not sound like much but the only place take that from is personnel. There is currently a hiring freeze, restricted travel and staff reduction through attrition. As an example, delegates were not able to attend WASHTO. That said, everyone is pleased that there is a reauthorization of MAP-21, a fix for the Trust Fund and a longer term solution coming soon.

Act on Consent Agenda

Chairman Peterson asked if any commissioners wanted to remove an item or if there were any questions. Commissioner Reiff moved to approve the Consent Agenda with the exception Item C – Resolution to Repeal PD 81.0 and 82.0. Commissioner Connell seconded that motion. By unanimous vote of the Commission, Item C was pulled from the Consent Agenda. Chairman Peterson entertained a motion to approve the Consent Agenda without Item C. Commissioner Reiff moved to approve the agenda, and Commissioner Connell seconded the motion. Upon vote of the Commission, the Consent Agenda passed unanimously.

Resolution #TC-3173

BE IT HEREBY RESOLVED, that the Transportation Commission's Regular Meeting Minutes for May 15, 2014, are approved as published in the official agenda of the June 18 & 19, 2014, meeting.

Resolution #TC-3174

Resolution #TC-3174

Establishing advocacy policies and priorities for the Moving Ahead for Progress in the 21st Century Act (MAP-21) reauthorization bill.

Approved by the Transportation Commission on July 17, 2014

WHEREAS, on July 6, 2012, the President of the United States signed into law a new transportation reauthorization bill, referred to as the "Moving Ahead for Progress in the 21st Century Act" or "MAP-21" (Public Law 112-141); and

WHEREAS, the MAP-21 is the primary federal law governing highway, bridge, transit, and transportation safety programs; and

WHEREAS, the MAP-21 will expire on October 1, 2014; and

WHEREAS, the White House and U.S. Department of Transportation transmitted to the U.S. Congress the "Generating Renewal, Opportunity, and Work with Accelerated Mobility, Efficiency, and Rebuilding of Infrastructure and Communities throughout America Act" or "GROW AMERICA ACT"; and

WHEREAS, the U.S. Senate has introduced and begun hearings on S. 2322, referred to as the "MAP-21 Reauthorization Act";

NOW THEREFORE BE IT RESOLVED, that the Transportation Commission hereby approves the twelve policy priorities delineated in the following table for legislation reauthorizing the MAP-21.

NOW THEREFORE BE IT FURTHER RESOLVED, that the Department staff communicate the approved policy priorities to the Colorado congressional delegation members and staff.

Herman F. Stockinger, Jr.
Herman Stockinger, Secretary
Transportation Commission of Colorado

8-13-14
Date

Resolution #TC-3175

Resolution #TC-3175

Repeal of Policy Directive 1005.0 "Removal and Disposal of Wildlife Carcasses from State Highways and Rights-of-Way"

Approved by the Transportation Commission on July 17, 2014

WHEREAS, Policy Directive 1005.0 was adopted by the Transportation Commission on June 15, 2005; and

WHEREAS, Policy Directive 1005.0 set forth the policy CDOT follows to remove wildlife carcasses from state highways and rights-of-way; and

WHEREAS, Policy Directive 1005.0 served its purpose in 2005 by requiring the Department to work collaboratively with the Division of Wildlife and the Colorado State Patrol to develop a working process for the efficient removal of dead wildlife from state highways and rights-of-way; and

WHEREAS, as part of the Department-wide initiative to reduce the number of Policy and Procedural Directives, the Department recommends that Policy Directive 1005.0 should be repealed because the companion Procedural Directive 1005.1 has been updated to reflect current protocol.

NOW THEREFORE BE IT RESOLVED, the Commission herein repeals Policy Directive 1005.0 "Removal and Disposal of Wildlife Carcasses from State Highways and Rights-of-Way" as being no longer necessary.

Herman Stockinger, Secretary
Herman Stockinger, Secretary
Transportation Commission of Colorado

2-13-14
Date

Discuss and Act on the Resolution to Repeal PD 81.0 and 82.0 Drug and Alcohol Policy

Commissioner Reiff stated that the Commission has asked for the resolution to be delayed and discussed when staff has reviewed comments made by commissioners. Chairman Peterson entertained a motion to delay the resolution until a later time. Commissioner Reiff made a motion to delay, and Commissioner Connell seconded the motion. Upon unanimous vote of the Commission, the resolution was delayed until a subsequent meeting.

Discuss and Act on the Resolution to Approve the Transition Contingency

Scott Richrath stated that last month Executive Director Hunt recommended that there was a transition fund taken out the Transportation Commission Contingency. The Commission approved that and requested staff returns this month with a formal resolution to adopt that. The Transition Fund is intended to help projects that were previously eligible for funding but under new cash management principles or new FASTER Safety eligibility rules may find themselves a little short. Included in the resolution are criteria under which projects could seek funding under the Transition Fund. This would provide authority to use \$10 million. As projects are completed and come in under the total budgeted amount, those dollars would go back to the Transition Fund first. They would not be diverted to other programs. He respectfully

requested the Commission formally adopt the \$10 million Transition Contingency Fund.

Commissioner Reiff asked Scott Richrath to outline the criteria under which a project may be eligible for funds. Scott Richrath stated that for a project to be eligible as it seeks funding from the Transition Fund the project must do the following:

- 1) It must have been fully funded prior to rule changes that have now left it partially funded. A project that knew from Day 1 that it was a \$4 million project but only had \$3 million available will not be able to use this to supplement the original funding.
- 2) The project no longer qualifies for the type of funds that were originally budgeted. A project originally budgeted with FASTER Safety dollars that does not meet the new FASTER Safety criteria and finds that it needs an additional \$500,000 due to bids or other reasons would have the opportunity to come through seeking Transition Funds.
- 3) Funds can only be used for supplementing the budget to advertise the project when the Engineer's Estimate comes in over budget, supplementing the budget to award when bids come in over budget, supplementing the budget to fund a change order for unforeseen conditions relating to the original work not a simple scope increase, and supplementing the budget to close a project.

Approval levels would apply as stated under Policy Directive 703 that the Commission has in draft format under the Information Only tab and that staff will seek to have approved in August 2014. Requests greater than \$2.5 million should seek supplemental funding sources from other programs to reduce Transition Fund request below \$2.5 million. Because the entire fund is \$10 million, the purpose behind the clause is that one project does not take half the contingency.

Any project savings from projects with Transition Funding first revert back to the Transition Fund. It is a last in, first out source of funding for individual projects. Those are the staff recommended criteria, but those can be changed upon request of the Commission.

Chairman Peterson entertained a motion to approve the Transition Contingency resolution. Commissioner Gruen moved for the approval of the resolution. Commissioner Connell seconded the motion. Upon vote of the Commission, the resolution passed unanimously.

Resolution #TC-3176

Resolution #TC-3176

Approving the creation and implementation of a \$10 million Transportation Commission Legacy Fund

Approved by the Transportation Commission of Colorado on July 17, 2014

WHEREAS, pursuant to § 43-1-106(8)(h), C.R.S., the Colorado Transportation Commission ("Commission") is charged with promulgating and adopting all Department budgets; and

WHEREAS, the Transportation Commission Contingency Reserve Fund ("TCCRF") was established to provide the Commission with discretionary funding; and

WHEREAS, pertaining to certain programs, budgetary resources have ceased and/or selection criteria have changed; and

WHEREAS, projects utilizing these programs were selected and initially funded based on previous criteria; and

WHEREAS, the Commission and the Department staff recognize the need to anticipate and plan for unexpected increases to projects within these programs; and

WHEREAS, the Program Management Governance Committee has recommended qualifications pertaining to the usage of the proposed Transportation Commission Legacy Fund; and

WHEREAS, the Commission intends that Policy Directive 703.0 will define the requisite approval levels for both the TCCRF and the proposed Transportation Commission Legacy Fund; and

NOW THEREFORE BE IT RESOLVED, the Commission authorizes a transfer in the amount of \$10 million from the balance of the TCCRF for the implementation of the Transportation Commission Legacy Fund.

Herman F. Stockinger
Herman Stockinger, Secretary
Transportation Commission of Colorado

8-13-14
Date

Discuss and Act on the 1st Supplement to the FY2015 Budget

Scott Richrath stated that there are two walk on items requested that were distributed electronically earlier. One is a RAMP request that seeks to move funding from red to green using previous nomenclature on how to move full budget authority forward on individual projects. The second one requests a small amount, but it does Contingency funding for Glenwood Canyon bike trail. As that would regain reimbursement through insurance proceeds, those proceeds would return to the Transportation Commission Contingency fund.

He offered to discuss any other projects the Commissioners had questions about and highlighted the line in the supplement that denotes which projects would continue to

come to the Commission under the new PD 703 and which ones would have staff authority, keeping in mind Regional Priority Program is one that would be staff level.

Chairman Peterson entertained a motion to approve the Budget Supplement. Commissioner Gilliland moved to approve the resolution, and Commissioner Gifford seconded the motion. Upon vote of the Commission, the resolution passed unanimously.

Resolution #TC-3177

BE IT SO RESOLVED, That the First Supplement to the Fiscal Year 2014-2015 Budget be approved by the Commission.

Discuss and Act on the Resolution to Approve the Greeley COP

Scott Richrath stated that last year he requested to borrow money to build a new Greeley building. At that time Commissioner Thiebaut stated that CDOT should borrow money if it needs to borrow money and spend cash if there is cash. He stated that the financial advisors and the legal bond counsel determined that it is possible to finance Greeley today. But should CDOT endeavor to take on a headquarters relocation, a Pueblo relocation or any other relocation of significant expense, the desire then may be to bundle those projects and use Certificates of Participation. Through the process, they learned that if one day Greeley will be bundled into a larger package the Commission's formal direction allowing that is necessary at this time. If 18 months down the road, it is determined to bundle Greeley with other properties and had not had formal approval to finance Greeley, it would preclude that future request.

The resolution commits the CFO to return to the Commission if and when it is decided to finance Greeley as part of any other project with the terms and conditions. But this resolution seeks the permission of the Commission to one day finance Greeley should that be the best way in the future. The resolution provides for a cap on the amount that can be requested, but again, a specific dollar amount would be requested at the time of a future resolution, along with terms and conditions of the entire package.

Commissioner Reiff stated that the costs will be \$20.4 million and that Stifel is recommending \$22 million. The contingency will be to cover the tax law issues. Scott Richrath stated that the blank would be filled in with \$22 million rather than \$20.4 million if so adopted by the Commission.

Commissioner Connell moved to approve the resolution, and Commissioner Gilliland seconded the motion. Chairman Peterson asked if there was any discussion. Commissioner Gruen stated that he planned to vote in favor of the resolution but wanted to go on record that he is extraordinarily leery of issuing Certificates of Participation. He understands that CDOT can be forced into that because of TABOR but that he hates to mortgage property that CDOT owns in order to finance other projects. Upon a vote of the Commission, the resolution passed unanimously.

Resolution #TC-3178

Resolution #TC-3178

A Resolution of the Colorado State Transportation Commission Declaring the Official Intent of the Colorado Department of Transportation to Reimburse Itself from the Proceeds of a Future Lease Purchase Financing for Capital Expenditures and Providing Certain Other Matters in Connection Therewith

Approved by the Transportation Commission on July 17, 2014

WHEREAS, the Colorado Department of Transportation ("CDOT") is an executive department of the State of Colorado; and

WHEREAS, the Colorado State Transportation Commission (the "Commission") is the governing body of CDOT; and

WHEREAS, CDOT presently intends to acquire, renovate and construct certain properties to house CDOT operations (the "Project"), including but not limited to administrative facilities in Denver, Greeley and Pueblo, Colorado; and

WHEREAS, CDOT currently intends and reasonably expects to participate in a lease purchase financing to finance the Project, including an amount of approximately \$22 million (the "Reimbursement Amount") for reimbursing CDOT for capital expenditures made by CDOT for the Project prior to the date when funds for the Project are available from such financing; and

WHEREAS, the initial expenditure of funds of CDOT for the Project occurred on a date that is within 60 days prior to the date hereof; and

WHEREAS, such lease purchase financing is to occur within 18 months of either the date that CDOT first expended funds for the Project or the date that the Project is placed in service, whichever is later (but in no event more than three years after the date of the original expenditure of CDOT funds for the Project); and

WHEREAS, the Commission hereby desires to declare the official intent of CDOT, pursuant to 26 C.F.R. § 1.150-2, to reimburse itself for the expenditure of CDOT funds for the Project from the proceeds of a future lease purchase financing of CDOT;

**NOW, THEREFORE, BE IT RESOLVED BY THE COLORADO STATE
TRANSPORTATION COMMISSION:**

Section 1. Dates of Capital Expenditures. All of the capital expenditures covered by this Resolution were or will be made not earlier than 60 days prior to the date of this Resolution.

Section 2. Declaration of Official Intent. CDOT presently intends and reasonably expects to participate in a lease purchase financing within 18 months of either the date of the first expenditure of funds by CDOT for the Project or the date that the Project is placed in service, whichever is later (but in no event more than three years after the date of the original expenditure of CDOT funds for the Project), and to allocate an amount approximately equal to the Reimbursement Amount of the proceeds thereof to reimburse CDOT for its expenditures in connection with the Project.

Section 3. Confirmation of Prior Acts. All prior actions of the officials and agents of CDOT that are in conformity with the purpose and intent of this Resolution and in furtherance of the Project shall be and the same hereby are in all respects ratified, approved and confirmed.

Section 4. Effective Date of Resolution. This Resolution shall take effect immediately upon its passage.

INTRODUCED AND ADOPTED at a regular meeting of the Commission
on July 17, 2014

Herman Stockinger, Secretary
Herman Stockinger, Secretary
Transportation Commission of Colorado

8-13-14
Date

**Discuss and Act on the Resolution to Refer I-70E to the HPTE Board for
Procurement**

Michael Cheroutes stated that resolution before the Commission responds to a recommendation from the HPTE Board that HPTE be given the authority to pursue a funding/financing alternative for the I-70E project that includes private participation. The term public-private participation can have many different meanings and include many different structures. The HPTE needs the confirmation that the option remains on the table during these next six critical months. If the process does not begin on a financing alternative, that alternative will be lost. The resolution requires HPTE to return to the Commission on a quarterly basis to report. There is important due diligence activity this summer with respect to what can be expected from the market if this alternative is chosen and what the optional structures might be. There is some important public outreach coming soon, a process that is ongoing. There will be a number of additional public meetings on this. A critical one will be in the fall as there are more details on the options. There will be opportunities for the Commission to come back and adjust the options or discontinue them altogether.

He stated that his interpretation of the resolution before the Commission was allowing HPTE to get started on a public-private partnership option and to take a look at alternatives to that – everything from public funding of the project, a decision that the project is not economically feasible at all, to different forms of public-private partnerships. There will be lots of time for people to input to that process. The HPTE Board will be comparing all those options throughout the process.

Chairman Peterson stated that the resolution the Commission would vote on today is not the one included in the packet but is the red-lined one that the Commissioners received the previous day. He stated that he is clear in his mind that this resolution allows HPTE to investigate the options but in no way commits the Commission or anyone to a specific financing option at this time.

Commissioner Hofmeister asked if HPTE was looking at partial private funding or if HPTE was looking at the possibility of funding the entire project privately because there have already been discussions about committing Bridge Enterprise funds and other funds. Director Cheroutes stated that it would partial funding. The process has been over the last several months since January. The Commission decided what the project ought to be and what ought to be maximum funds available for the project. The HPTE now begins the process to see whether it is possible to get the project financed within those limitations. The Commission did decide preliminarily to commit Bridge Enterprise monies, 228 monies and DRCOG monies. Commissioner Hofmeister asked what estimated percentage of the project would be funded privately. Director Cheroutes said approximately 10%-15%.

Commissioner Reiff stated that this is a single step in the road. He has repeated that this has to be an iterative process, both with our industry partners and what the community groups think. It is necessary to understand the impact. He asked for those revisions because as a Commissioner he has not committed to an approach. The Commission needs to put something on the table to have people react to. It has been explained that the industry partners will not take it seriously unless CDOT offers them something to consider. He stated that he firmly believes that this will be back to the Commission and to the HPTE Board on multiple occasions. It is necessary to understand what everyone is thinking on this before making a final decision.

Commissioner Gifford stated that the Commission received a letter from Denver Councilwoman Judy Montero of District 9, in whose district a majority of this project is located, expressing concern about the level of communication with, involvement with and comprehension of this very complex financing for this very complex project. Among other things, she requested that the Commission hold a follow up meeting in her district to discuss the implications of this decision. Commissioner Gifford made a request that the Commission work with staff to work with Councilwoman Montero to set up a follow up meeting that meets her request and that she feels would be adequate in terms of discussing, informing and listening to the community on this issue. Director Cheroutes stated that he would love the opportunity to that.

Commissioner Gilliland stated that she is an HPTE Board member as well as sitting on the Commission. This project is very complex, very significant and very important for the state of Colorado. The Commission and the Board have had many meetings about the different financial options on the table. It is time because it is necessary to

gain enough security with the private investors that may want to work with CDOT as partners. CDOT needs to give them some type of consideration to move forward with. She stated that she is very supportive of this and concurs with the other Commissioners that CDOT needs to listen to the public and be as transparent as possible to engage them in this discussion. But this issue is very complex, and it is difficult to get everybody in the public update on all the different aspects of the financing. It needs to be done to the extent possible. Given the new HPTE Transparency Policy, every effort is being made to engage in every way that CDOT can in an effort to get the right level of input, to listen to that input and to use it to move toward a decision. However, it is important to at least take this step and to move forward to get this under consideration as a real option to look at in order to move down the road. It is a very complex project, and CDOT needs something to move forward with. She stated that she is totally supportive given the way the resolution is written and that the Commission is not making a formal decision that this will be a P3 contract but that this is only an evaluation of that as an option. She stated that she is fully supportive of moving forward.

Commissioner Connell stated that she will support moving ahead with this. She did not want to reiterate all the previous statement, but she stated that she moves with caution. Perception is 9/10 of the law, and the Commission needs to take what was learned from the missteps with US 36 and assure that those will not be repeated in this process. The more complex something becomes the more people have issues with it. She stated that she fully supports moving ahead but that CDOT has to do much more public contact.

Director Cheroutes stated that the public-private partnership process in this case, because it is such a complicated process, will stretch out over a minimum of a year and a half. There will be many exit points for this if it looks like it will not work for one reason or another. The legislature will provide their views on this. A number of community activists will provide their views on this. It is a complicated process to describe, and the HPTE is aware that they will have to take a lot of time to describe what is going on. They are committed to doing that.

Chairman Peterson stated that this is a very complex project on many levels, including an engineering level, a fiscal level, to a social level with the neighborhoods that are involved. It is critical to the statewide system. It is obvious that the current existing conditions do not offer an alternative to provide the transportation required for the Denver Metropolitan Area and the state as a whole. This is a state issue. The Commission has committed a large amount of future budgets to this project, recognizing its importance. He thanked the HPTE Board and Director Cheroutes for adding the verbiage in the one section of this resolution that makes it much easier to move forward at this time. These referral processes look at alternative means to provide the transportation that the state needs over time and realize that CDOT can no longer depend on 20th century mechanisms to fund 21st century needs across the state or the country. The Commission heard from John Cater about the problems and challenges that transportation is facing on the federal level, which are by no means solved at this point. This provides an option that should be looked at. It gives HPTE the authority to move forward in investigating those options without coming up with a pre-conclusion as to whether any of those options are viable for this particular project. He stated that this is time critical, but it is also critical to gather as much information from public outreach and public input as

possible, including from elected legislators at the State House and other groups that will be directly involved like the traveling public within the state. He stated that CDOT has done that to date and that he is confident that will continue to happen and expand this complex issue moves forward. He stated that he will be supporting the resolution.

Chairman Peterson entertained a motion to refer the I-70E project to the HPTE Board. Commissioner Gifford moved to approve the resolution, and Commissioner Gilliland seconded the resolution. Upon vote of the Commission, the resolution passed unanimously.

Resolution #TC-3179

Resolution #TC-3179

Approving referral of the I-70 East Project to the Colorado High Performance Transportation Enterprise to pursue Public-Private Partnership opportunities in the procurement of the I-70 East Project.

Approved by the Transportation Commission on July 21, 2014

WHEREAS the Transportation Commission is responsible, pursuant to Section 43-1-106(8), C.R.S., for formulating the general policy with respect to the management, construction, and maintenance of public highways of the Colorado Department of Transportation (CDOT); and

WHEREAS the General Assembly created the Colorado High Performance Transportation Enterprise (HPTE), pursuant to Section 43-4-806, C.R.S., as a government-owned business within CDOT to pursue innovative means of more efficiently financing important surface transportation projects that will improve the safety, capacity, and accessibility of the surface transportation system; and

WHEREAS such innovative means of financing projects include, but are not limited to, public-private partnerships, operating concession agreements, user fee-based project financing, and availability payment and design-build contracting; and

WHEREAS CDOT, in conjunction with HPTE and the Colorado Bridge Enterprise, has investigated various delivery methods that can be utilized in delivering an important surface transportation project that includes replacing the I-70 viaduct between Brighton Blvd and Colorado Blvd with a Partially Covered Lowered (PCL) highway and other improvements reaching as far east as Tower Road (I-70 East Project); and

WHEREAS the delivery methods reviewed for the I-70 East Project have included (i) a performance based design/build/operate/maintain/finance concept (Performance Based Public-Private Partnership); (ii) a toll-risk based design/build/operate/maintain/finance concept; (iii) a design/build/finance concept; and (iv) a design/build public funding approach; and

WHEREAS based on initial value for money analysis considered by the Transportation Commission, other financial information available to the public, and public input received to date, the Performance Based Public-Private Partnership appears to give CDOT the best value for its money in delivering the I-70 East Project in a timely and efficient manner; and

WHEREAS the Transportation Commission has determined that HPTE, the entity statutorily authorized to pursue innovative means of financing surface transportation projects, is uniquely suited to handle the procurement efforts related to implementing the I-70 East Project, with the support of the Office of Major Project Development; and

WHEREAS the Transportation Commission supports the efforts of HPTE to involve the public as it evaluates financing options for I-70 East Project and to continue to solicit and consider public input.

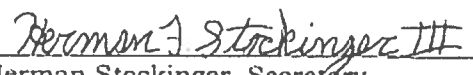
NOW THEREFORE BE IT RESOLVED, the Transportation Commission hereby refers the procurement of the I-70 East Project to HPTE to further pursue Public-Private Partnership opportunities for the I-70 East Project and such referral and the Transportation Commission's final decision is subject to, and may be modified by, continued review and consideration of financial and other relevant analysis and to the continued review and consideration of public input; and

BE IT FURTHER RESOLVED, the Transportation Commission requests that HPTE, in administering the I-70 East Project procurement, conduct an updated value for money analysis prior to issuing a Request for Proposal, provide primary contract terms to the Transportation Commission for its review prior to commercial close, and, in cooperation with the Office of Major Project Development, prepare quarterly reports to the Transportation Commission regarding the status of the I-70 East Project and the related procurement efforts; and

BE IT FURTHER RESOLVED, the Transportation Commission will continue to evaluate all future budgeting for the I-70 East Project; and

BE IT FURTHER RESOLVED, the Transportation Commission directs staff to develop a comprehensive program addressing disadvantaged and small business utilization and workforce training in administering the procurement for the I-70 East Project and to provide the details of this program to the Transportation Commission; and

BE IT FURTHER RESOLVED, the Transportation Commission directs staff to consider and recommend an HOV policy for the I-70 East Project that provides system continuity with existing and proposed express lanes and is responsive to input from corridor stakeholders.


Herman Stockinger, Secretary
Transportation Commission of Colorado

7-22-14
Date

Acknowledgements

Deb Perkins-Smith stated that CDOT was chosen to receive the Community Partner Award by the American Lung Association in Colorado for the CDOT Air Quality Program's work in program support to the CASEO Clean Air at Schools - Engines Off! program.

The Engines Off program was launched in 2008 and has since provided education and support for 30 schools around Colorado and the Front Range. The Engines Off! program is an education and intervention program conducted at elementary and middle schools to increase awareness about the harmful impacts of idling, especially around young children, and integrate behavior-changing mechanisms into the school culture. The year-long program includes collection and analysis of emissions data in and around school properties, an educational campaign spearheaded by school faculty and students, and student-led interventions including securing parent pledges and in-classroom presentations (at the middle school level).

Participating schools were located in the counties of Adams, Arapahoe, Boulder, Denver, Douglas, Garfield and Mesa. On average, the 11 schools reduced emissions

by 67% - which equates to a carbon monoxide equivalent of over 168,000 individual cigarettes no longer being smoked each day!

This award presented to Sabrina Williams and Jill Schlaefer at the Annual American Lung Association's Appreciation Event on June 19th, 2014. Sabrina Williams has been a part of this programs development since its inception.

Chuck Attardo stated that he is the Region 1 Planning and Environmental Manager and that Ashley Bushey, the Region 1 Historian, and Janet Garek, an Environmental Project Manager at Region 1 were with him. He thanked the Commission for the opportunity to share a success story with the Commission. He stated that they evaluate 120 projects each year for environmental impacts. This historic guardrail project has been one of the gems of the last year. At first, it was unbelievable that there might be a historic guardrail that would delay the completion date of a project. Guardrail replacement is usually straightforward when it comes to historical clearance. However, this was a different type of guardrail because it was spring loaded. This was the original installation on US 40. US 40 was constructed between 1936-1938 in Jefferson County with assistance from the PWA, part of FDR's New Deal Recovery Plan. Further investigation underlined that this type of guardrail was an historical turning point in guard rail design, moving from passive delineation into something that was more safety oriented, the idea being that the springs would guide the vehicle back onto the highway. Even though this is some of the last type of this spring loaded guardrail was very common in the 1930's. In terms of the historic clearance, the project had no federal nexus. They were able to work with the project team to archivally document the rail before it was replaced and maintain the project schedule. Janet stated that the exciting part of this project was that the research revealed such a rich history of innovation, collaboration and coordination. Everyone worked together to make a successful project delivery, even with the historic guardrail, which was actually substantially made here in Denver.

Chairman Peterson stated thanked them for the work that they do. He stated that it would have been hard to imagine that there was this much of an evolutionary process in safety for the traveling public. It indicates that our transportation system is always evolving, it has in the past and will continue to do so in the future. He commended them on their prompt action in preserving something that is historically important for the organization and for the people of Colorado without materially delaying the new guardrail, which is a safety issue. That is a perfect example of our engineering and staff of today and those tasked with reminding us of where we came from so that we know where we are going.

Discuss Senate Bill 228

Chairman Peterson thanked State Budget Director Henry Sobanet for returning to CDOT to present Senate Bill 228 to the Commission and to the public. Mr. Henry Sobanet stated that it was a pleasure to be there today. He stated that he was at the Commission to be of service to the Commission and to answer any questions that the Commission may have about Senate Bill 228. Many people may recall the old Senate Bill 1 in which a small part of the sales tax came to the Highway Fund from the General Fund. During the recession the law that triggered that was repealed and replaced with the new law. The trigger for the new law Senate Bill 228 is personal income in the state of Colorado. If personal income in the state of Colorado grows by

5% or more in a calendar year, the most applicable subsequent fiscal year gets a diversion of 2% of the state's General Fund revenue to the Highway Fund.

Right now, during calendar year 2014, it is projected that personal income will grow that fast or faster. That means that for fiscal year 2016 there will be a 2% diversion to the Highway Fund from the General Fund. A percentage of that is earmarked for transit, but the rest goes to the more normal program here at CDOT. Looking ahead, Director Hunt requested a discussion about the risks and how secure the Commission should feel about this fund transfer. The risks are in a few places. First, the forecast could be wrong. If personal income in Colorado does not grow by 5%, the law would not be automatically triggered. The second risk is within the law itself. Even if it is triggered, under certain conditions, if there is a certain type of TABOR refund within the state, there is a cascade of reduction that would occur in the amount of money that would come to CDOT. Ironically, faster economic growth could actually whittle away at the ability to fully fund this under the law. Before there is a TABOR rebate the state would actually collect more money, and there could be a policy choice to still make the transfer to CDOT.

One of the dynamics of the last legislative session was the extent to which state has met its requirements under Amendment 23. There is currently a lawsuit about the appropriation level to K-12 education under Amendment 23. There is a lot of political wrangling over how much money should go to K-12 education last session. That is the biggest line item in the General Fund, and it would be unfair to say that there is no political pressure from certain quarters to simply say more money to education next year.

As of today though, the budget request in November will include allowing for the transfer. The non-trigger would have to mean that an economic disruption is foreseen that would drop personal income. Right now, Colorado's economy is in the top five easily in the country by a number of measures. So for the forecast to drop something would have to happen between now and September. The September forecast is what the budget is based on. If the forecast remains relatively unchanged, this will be in the budget request in November.

The third thing is that the Budget Office has tried since 2011 to make room for this transfer to be as easy as possible. The 228 law included a provision where capital construction got a mandatory increase in the state and also the state's reserve got a mandatory increase. The entire mandatory reserve increase has been removed for the whole law. The reserve level is already 6½% in the General Fund that the law anticipated. By meeting that on an annual budget, it is easier to send 2% of the budget to transportation. The economy has done well, and space has been made to make the 2% transfer. And absent a huge disruption, this will be in the budget request.

Commissioner Gruen stated that something was mentioned about the initial contribution to transportation being one year. He asked Mr. Sobanet if the transfer will be one year or five years. Mr. Sobanet stated that the law triggers for five years, but the budget is done one year at a time. They request one year at a time, but the law triggers a five year diversion.

Commissioner Reiff stated that he remembers the Noble Bill and its repeal. He stated that this seems a lot like the Noble Bill, and he asked what the politics looked like right now. He stated that Mr. Sobanet mentioned K-12 education and asked what Mr. Sobanet was hearing about the subject. Mr. Sobanet stated that notwithstanding all that pressure around K-12 and other things in the budget as Colorado is recovering. He did not believe there was single vote in the legislature to repeal Senate Bill 228. He stated that he did not even hear side conversations of taking it away. With term limits, some of the people who voted for the law are not there anymore. Some of the institutional knowledge about why the law was passed is now gone, which leaves a challenge operationally to do some outreach and education. Balancing that out, people in leadership and on the Budget Committee know about this law and have been planning for it for three years. To that extent, the knowledge it good, and transportation is a priority at the legislature. All the different lobbies are powerful. They have their ways and their talking points, but he did not sense any political will to repeal the law during the last year.

Chairman Peterson thanked Mr. Sobanet for taking time to visit the Commission. Mr. Sobanet thanked the Commission for their service.

Other Matters

Chairman Peterson stated that there were no other matters to come before the Commission.

Adjournment

Chairman Peterson announced that the meeting was adjourned at 10:20am.

Herman J. Stockinger III
Herman Stockinger, Secretary
Transportation Commission of Colorado

8-26-14
Date

